UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHARLES JOHNSON,

Plaintiff,

vs.

A. FIGUEROA, Corrections Officer; T. DAVIS, Corrections Officer; SGT. PRECIADO, Corrections Sergeant; ORDUNA, Registered Nurse; D. BELL, Correctional Counselor; L. GUTERREZ; G. STRATTON, Corrections Captain; R. DELGADO, Associate Warden; N. GRANNIS, Chief of Inmate Appeals Branch; and L. SCRIBNER, Warden of Calipatria State Prison,

Defendants.

CASE NO. 08cv1242-H (JMA)

ORDER DENYING DEFENDANTS' MOTION TO DISMISS and STRIKING MONETARY RELIEF AGAINST DEFENDANTS IN THEIR OFFICIAL CAPACITIES

On July 11, 2008, Charles Johnson ("Plaintiff"), a California prisoner proceeding *pro se* and *in forma pauperis*, filed an action against Defendants pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915(a). (Doc. No. 1.) On January 2, 2009, Defendants[1] moved to dismiss the complaint, alleging that Plaintiff failed to exhaust state administrative remedies prior to filing in federal court and that Defendants are immune from liability under the Eleventh Amendment to the Federal Constitution. (Doc. No. 15.) On December 1, 2008, Plaintiff filed an Opposition to Defendants' Motion to Dismiss. (Doc. No. 20.)

[1]At the time of this Order, Defendants Preciado, Guterrez, Davis, and Scribner were not served.

The Magistrate Judge issued a Report and Recommendation on April 13, 2009 recommending that this Court grant in part and deny in part Defendants' Motion to Dismiss. (Doc. No. 22.) Plaintiff filed his Objection to the Report and Recommendation on May 4, 2009. (Doc. No. 23.) Plaintiff included supplemental documents in his Objection to address the recommended dismissal of one of his claims.

For the reasons below, the Court ADOPTS in part the Magistrate Judge's Report and Recommendation, DENIES Defendants' Motion to Dismiss, and STRIKES all monetary damages against Defendants in their official capacities.

Background

A. Civil Rights Allegations.

Plaintiff alleges that he is hemiplegic with paralysis in his right should, arm, and hand. (Doc. No. 1 at 3.) As a result of his medical condition, a medical order was issued on December 5, 2007 that required the use of waist chains rather than handcuffs to transport Plaintiff to and from therapy appointments. (Doc. No. 1 at 4.) On several occasions between late November 2007 and early January 2008, Defendants Figueroa and Davis refused to use waist chains and demanded that Plaintiff submit to handcuffs before being transported to therapy, even though Plaintiff informed Defendants of the medical order requiring waist chains. (Doc. No. 1 at 3.) Plaintiff submitted to handcuffs to get to his therapy appointments, but they had to be removed due to pain. (Doc. No. 1 at 3.) Plaintiff alleges that he sought assistance from Defendant Preciado, a correctional sergeant, but Defendant Preciado sided with Defendants Figueroa and Davis.

Plaintiff filed an administrative appeal seeking accommodation under the Americans with Disabilities Act (ADA) by requiring prison staff to use waist chains instead of handcuffs. (Doc. No. 1 at 4.) The appeal was granted in full at the first level of review on December 20, 2007. (Doc. No. 1 at 4.) Plaintiff alleges that prison officials retaliated against him after the appeal was granted by refusing him medical care and by transferring him to Kern Valley State Prison. (Doc. No. 1 at 4.) Moreover, Plaintiff alleges that Defendants Bell, Stratton, Delgado, Grannis, and Scribner failed to accommodate his ADA appeal by refusing him medical care.

(Doc. No. 1 at 3.)

Plaintiff seeks $75,000 in damages and an injunction preventing Defendants from denying him medical treatment, including transportation to and from physical therapy, and preventing Defendants from harassing, punishing, or retaliating against him. (Doc. No. 1 at 7.)

Discussion

A. Claim 1 and Exhaustion of State Remedies.

Plaintiff's first claim against Defendants is failure to provide medical care. Defendants move for dismissal because state administrative remedies are supposedly not exhausted. The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), states that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison or other correctional facility until such administrative remedies as are available are exhausted." Inmate suits about prison life, including specific instances of alleged abuse, fall under PRLA and are subject to the exhaustion requirement. Porter v. Nussle, 534 U.S. 516, 532 (2002). PRLA's exhaustion requirement is mandatory so as to provide state correctional facilities the opportunity to internally address any complaints before judicial involvement. Porter, 534 U.S. at 524. Failure to exhaust available administrative remedies prior to filing suit is properly remedied through dismissal without prejudice. Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003); McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002). Because the exhaustion requirement constitutes an affirmative defense, a defendant bears the burden of raising the defense and proving the absence of exhaustion. Wyatt, 315 F.3d at 1119.

When pursuing state administrative remedies, prisoners are only required under PRLA to exhaust those remedies that are readily available. Booth v. Churner, 532 U.S. 731, 736 (2001). If a remedy is no longer available, a prisoner does not need to pursue that administrative course any longer. Brown v. Valoff, 422 F.3d 926, 935-36 (9th Cir. 2005). The Ninth Circuit in Valoff noted that a prisoner "need not press on to exhaust further levels of review once he has either received all 'available' remedies at an intermediate level of review of been reliable informed by an administrator that no remedies are available." 422 F.3d at 935.

Valoff further stated that an inmate might want to appeal every issue to the highest level to avoid an exhaustion issue, but that "over-exhaustion" is not required once relief is no longer "available." 422 F.3d at 935. Other circuits are in accord with this approach. See Ross v. County of Bernalillo, 365 F.3d 1181, 1187 (10th Cir. 2004) (noting that once a prisoner has received all available relief under administrative procedures the administrative relief has been exhausted); Abney v. McGinnis, 380 F.3d 663 (2d Cir. 2004) (observing that further exhaustion attempts are unnecessary when if there no possibility of some relief).

Under California law, prisoners may appeal any departmental action, decision, condition, or policy that is perceived to adversely affect an individual's welfare, Cal. Code Regs. tit. 15, § 3084.1(a), or may appeal misconduct by correctional officials or officers, Cal. Code Regs. tit. 15, § 3084.1(e). The administrative process has several levels of appeal: (1) informal resolution; (2) written appeal on Inmate Appeal Form 602; (3) subsequent appeal to the institution's head; and (4) final level of appeal to the Director of the California Department of Corrections and Rehabilitation. See Barry v. Ratelle, 985 F. Supp. 1235, 1237 (S.D. Cal. 1997). The final level of appeal to the Department of Corrections Director is not further appealable, and therefore state administrative remedies are exhausted at this point. Cal. Code Regs. tit. 15, §§ 3084.1(a) and 3084.5(e)(2).

Defendants have not carried their burden to show that Plaintiff failed to exhaust state administrative processes. Defendants acknowledge that Plaintiff's ADA appeal was granted at the first level of review (Doc. No. 15 at 8; Declaration of D. Edwards at ¶8(a)), but Defendants proceed to argue that even though Plaintiff's appeal was granted at the first level, Plaintiff still had an obligation to seek further review at the second or third level. (Doc. No. 15 at 8.) Defendant's contention lacks merit. Valoff noted that a prisoner "need not press on to exhaust further levels of review once he has either received all 'available' remedies at an intermediate level of review of been reliable informed by an administrator that no remedies are available." 422 F.3d at 935.

Plaintiff filed an appeal regarding his first claim for inadequate medical care, and the appeal was granted in full at the first level of review. (Declaration of D. Edwards at ¶8(a)).

Defendants cannot show absence of exhaustion unless some relief remains available to the Plaintiff at unexhausted levels of the grievance process. Valoff, 422 F.3d at 936-37. All relief sought in the present appeal was granted, and therefore there was no further remedy or relief that Plaintiff could have sought on a second or third level appeal. See Valoff, 422 F.3d at 935. This is further supported by the Declaration of T. Emigh, Assistant Chief of the Inmate Appeals Branch, which states, "A disability appeal is not necessarily rejected and screened-out because a CDC-1824 has been deemed (granted) at the first level of review. If the inmate can demonstrate that the alleged grant does not fully resolve the issues raised, the matter can be further appealed." (Dec. of Emigh at 5.) Defendants' declarations indicate that a complaint can be further appealed if the inmate can show that the granted relief does not entirely resolve the issues raised, but in this case the first-level review granted everything that Plaintiff sought. This result comports with the policy behind the PRLA, which is to allow state administrative agencies the opportunity to internally correct errors before litigation proceeds in federal court. Porter, 534 U.S. at 524. Plaintiff filed an internal appeal in this case, and the prison acknowledged and corrected the error at the first level of review, thus removing any need for further internal review.

Defendants' further argue that the appeal letter indicating that the appeal had been granted contained language indicating that Plaintiff could appeal the issue to a second level of review if desired. (Doc. No. 15, App. B.) Since Plaintiff received relief at the first level of review, there was no need or desire to appeal to higher levels of review.

Accordingly, the Court denies Defendants' Motion to Dismiss Claim 1 due to unexhausted state administrative remedies.

B. Claim 2 and Exhaustion of State Remedies.

Plaintiff's second claim against Defendants is that they retaliated against Plaintiff for filing his medical appeal by transferring him to another prison. (Doc. No. 1 at 3.) Defendants move to dismiss based on failure to exhaust state administrative remedies. (Doc. No. 15 at 8-9.) The Magistrate Judge recommended dismissal because the record at the time the Report and Recommendation was issued showed that Plaintiff had failed to file an appeal regarding his

retaliation claim through the prison grievance system. (Doc. No. 22 at 7-8.) Plaintiff in his Objection provided further documentation in support of his contention that he had properly exhausted the retaliation claim, but the Magistrate Judge did not have this information available. (Doc. No. 23.)

Plaintiff's Objection demonstrates that he exhausted his state administrative remedies for this retaliation claim. Plaintiff filed a CDC-1824 Form on February 16, 2008 that was formally received on February 21, 2008 and assigned log number CAL-I-08-00280. (Doc. No. 23, App. A at 1-2.) Defendants' records confirm that this appeal was received. (Doc. No. 15, Declaration of D. Edwards, App. C.) Plaintiff included his CDC-1845 and CDC-7410 medical forms with the appeal. (Doc. No. 23, App. A at 3-4.) Plaintiff's complaint was resolved at the second level on March 13, 2008 when the appeal was granted.[2] (Doc. No. 23, App. A at 6; Doc. No. 15, Declaration of D. Edwards, App. C.) On May 8, 2008, the Inmate Appeals Branch screened-out Plaintiff's appeal from the third level of review because the appeal form should have been completed through the second level of review prior to a being submitted for a third-level review. (Doc. No. 23, App. A at 8.)

Valoff noted that a prisoner "need not press on to exhaust further levels of review once he has either received all 'available' remedies at an intermediate level of review of been reliable informed by an administrator that no remedies are available." 422 F.3d at 935. Plaintiff filed his transfer complaint, which was answered at the second level of review. Plaintiff's third-level appeal was later screened-out. Plaintiff has shown that he went through the state administrative process to have his complaint addressed, and that the state did address his retaliation complaint through its internal processes.

Accordingly, the Court denies Defendants' Motion to Dismiss the retaliation claim.

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[2]In his administrative appeal, Plaintiff requested that his current medical status be rescinded and that his transfer be reconsidered based on current medical evaluation forms. (Doc. No. 23, App. A at 6.)

B. Eleventh Amendment Immunity.

Defendants contend that they are immune from suit under the Eleventh Amendment to the Federal Constitution. (Doc. No. 15 at 4-6.) Suits against officials acting in their official capacity are essentially suits against the state, and therefore monetary damages sought against an official acting in his official capacity are barred by immunity. Will v. Michigan Dept. Of State Police, 491 U.S. 58, 71 (1989). The Eleventh Amendment, however, allows civil actions seeking injunctive relief against state officials, and actions seeking monetary damages from an official in his personal capacity. Will, 491 U.S. at 71; Romano v. Bible, 169 F.3d 1182, 1186 (9th Cir. 1999). (Doc. No. 1 at 1-3; Doc. No. 20 at 4-5.) Accordingly, the Court strikes any request for monetary damages against Defendants in their official capacities. The Court notes, however, that Plaintiff is suing all Defendants in their official and personal capacities, and that Plaintiff seeks injunctive relief. Damages sought in their personal capacities and injunctive relief remain available.

Conclusion

For the reasons stated above, the Court ADOPTS in part the Magistrate Judge's Report and Recommendation, the Court DENIES Defendants' Motion to Dismiss, and the Court STRIKES any monetary damages against Defendants in their official capacities.

IT IS SO ORDERED.

DATED: July 7, 2009

MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

COPIES TO:

All parties of record.